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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 ALCON ENTERTAINMENT, LLC,
12 a Delaware Limited Liability
Company,

13 Plaintiff,
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15 v.
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18 TESLA, INC., a Texas Corporation;
19 ELON MUSK, an individual;
20 WARNER BROS. DISCOVERY,
INC., a Delaware Corporation;

21 Defendants.
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CASE NO. 2;24-CV-09033-GW-RAO

**PLAINTIFF ALCON
ENTERTAINMENT, LLC’S
OBJECTIONS AND RESPONSES TO
EXTRINSIC MATERIAL PROFFERS
IN DEFENDANT WARNER BROS.
DISCOVERY, INC.’S MOTION TO
DISMISS FIRST AMENDED
COMPLAINT**

Hearing Date: April 7, 2025
Time: 8:30 a.m.
Courtroom: 9D
Judicial Officer: Hon. George H. Wu

**OBJECTIONS AND RESPONSES TO EXTRINSIC MATERIAL
PROFFERS IN WARNER BROS. DISCOVERY, INC.’S
MOTION TO DISMISS**

Plaintiff Alcon Entertainment, LLC (“Plaintiff” or “Alcon”) makes the following objections and responses to the proffers of extrinsic material made by defendant Warner Bros. Discovery, Inc. (“WBDI”) in connection with WBDI’s motion to dismiss Alcon’s First Amended Complaint (“FAC,” [Dkt. 37]) pursuant to Fed. R. Civ. Pro. 12(b)(6) (“Rule 12(b)(6)”) and 8(a) (“WBDI Motion,” [Dkt. 49]).

I. RULE 12(b)(6) EXTRINSIC MATERIAL EXCEPTIONS

On a Rule 12(b)(6) motion, a court may consider material external to the challenged pleading and proffered by the movant without treating the motion as made pursuant to Fed. R. Civ. P. 56 (summary judgment), pursuant to three exceptions: 1) exhibits to the complaint (“First Exception”); 2) documents referenced by the complaint, upon which it “necessarily relies,” and the authenticity of which are undisputed (“Second Exception”); and 3) matters properly subject to judicial notice (“Third Exception”). *U.S. v. Corinthian Colleges*, 655 F.3d 984, 998-99 (9th Cir. 2011); *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (2001).

**II. THE WBDI MOTION’S PROFFERS AND PLAINTIFF’S
POSITIONS**

PROFFER NO.	DESCRIPTION	PLAINTIFF POSITION
1	“Plaintiff has had a chance to review the lease agreement attached to WBDI’s motion to dismiss the original complaint.” (WBDI Motion at 1:18-21.), and all similar factual assertions in the WBDI Motion on this point, which	The statements are misleading and referencing material extrinsic to the FAC and not subject to any Exception. Not had Alcon not ever seen the

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	permeate the WBDI Motion.	document at all before WBDI submitted it to the Court as part of its initial motion to dismiss, Alcon still does not have full access to it in a meaningful way. Musk and Tesla would only provide the unsealed document to Plaintiff's counsel and three executives at Alcon, and those are the only people on the Alcon side who have examined the unsealed document. That means, <i>inter alia</i> , not only has Alcon not had any formal discovery concerning the document, Alcon has also been unable to conduct even any meaningful investigation outside the discovery process, such as consulting with any business people who
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1			actually have experience
2			in such agreements and
3			the customs and practices
4			around them, including
5			facial reasonableness or
6			excessiveness of license
7			fees shown for just a
8			physical event allegedly
9			with no brand affiliation
10			component, and the like.
11			The Court should not
12			consider any of these
13			statements on Fed. R.
14			Civ. P. 12(b)(6).
15	2	“WBDI had no involvement in the	This is a factual assertion
16		infringing acts.” (WBDI Motion at	outside the FAC, and
17		1:21-22.)	contradicting it, and not
18			subject to any of the
19			Exceptions. The Court
20			should not consider it.
21	3	February 4, 2025 Declaration of	The declaration is
22		Rachel Jennings [Dkt. 23-2], and	material extrinsic to the
23		all statements therein.	FAC, not subject to any
24			Exception. The Court
25			should not consider it.
26	4	Exhibit 1 to February 4, 2025	This is material extrinsic
27		Declaration of Rachel Jennings	to the FAC, not subject to
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1		[Dkt 23-3, 35-1] (purported Tesla-	any Exception. Whether
2		WBDI Contract) (all versions,	or not the document
3		redacted and unredacted).	might actually be part of
4			documentation of a
5			business relationship
6			between WBDI and Tesla
7			referenced in the FAC
8			and which the FAC says
9			it believes on information
10			and belief exists, Plaintiff
11			does not admit the
12			authenticity of the
13			document. For example,
14			among other concerns,
15			even on the Jennings
16			declaration proffered, the
17			possibility is left open
18			that the document is not
19			the only document
20			reflecting or documenting
21			the entire scope of the
22			business relationship
23			between WBDI and Tesla
24			regarding the event.
25	5	“[A]lleged ‘contractual agreement’	These are factual
26		between WBDI and Tesla ...	assertions of material
27		consists of contractual terms that	extrinsic to the FAC, not
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1		never existed.” (WBDI Motion at	subject to any Exception.
2		2:15-17.); “[A]s the real contract	The Court should not
3		shows – and which Plaintiff	consider them, or any
4		knows, having reviewed the	similar factual assertions
5		contract prior to filing its FAC –	by WBDI along this same
6		[Plaintiff’s allegation of a brand	vein.
7		affiliation component to the	
8		business relationship between	
9		Musk and Tesla] is simply not	
10		true.” (WBDI Motion at 2:25-27.)	
11		“Nothing could be further from the	
12		truth.” (WBDI Motion at 5:18-19.)	
13	5	Exhibit 2 to February 4, 2025	For purposes of the
14		Omnibus Declaration of Chris	Motion, the document
15		Marchese (Recording of October	satisfies the Second
16		10, 2024 We Robot Presentation	Exception. The Court
17		[“We Robot Recording”]).	may consider it.
18	6	Alleged Alcon non-ownership of	This is a mixed factual
19		word mark “Blade Runner.”	and legal assertion
20		(“Plaintiff does not own the ‘Blade	outside the FAC, not
21		Runner’ name or mark [.]”	subject to any of the
22		[WBDI Motion, 4:19.])	Exceptions, and is also
23			false. Although it did not
24			plead it, Alcon does in
25			fact own a Lanham Act-
26			cognizable ownership
27			interest in the word mark
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1			“Blade Runner.” The
2			Court may not consider
3			this proffer.
4	7	“[I]t is WBDI’s affiliate that owns	This is a mixed factual
5		the exclusive rights in [the original	and legal assertion
6		1982 “Blade Runner” film].	outside the FAC, not
7			subject to any of the
8			Exceptions, and is also
9			false in the way being
10			presented. Although it
11			did not plead it, Alcon
12			does in fact own a
13			Lanham Act-cognizable
14			ownership interest in the
15			word mark “Blade
16			Runner.” A WBDI
17			affiliate owns some
18			exclusive rights in the
19			original 1982 Picture, but
20			Alcon actually owns
21			many of them, including
22			all relevant rights to
23			prepare derivative works
24			to the 1982 Picture. No
25			WBDI affiliate owns
26			exclusive rights in the
27			‘Blade Runner’ word
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1			mark. That is false. The
2			Court may not consider
3			this proffer.
4	8	Implicitly, that there is a prior	This is a factual assertion
5		ruling in this action, or from this	outside the FAC, not
6		judicial officer in a prior action,	subject to any of the
7		“admonishing” Plaintiff or	Exceptions, and is also
8		Plaintiff’s counsel for violating	false. There have been no
9		Fed. R. Civ. P. 8(a). (WBDI	prior substantive rulings
10		Motion, 18:12-15.)	in this case on any issue.
11			Plaintiff’s counsel has
12			been appearing before
13			this judicial officer in
14			cases from time to time
15			for multiple decades and
16			does not recall ever being
17			“admonished” for
18			violating Fed. R. Civ. P.
19			8(a) in any such case.

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22 DATED: March 17, 2025

ANDERSON YEH PC

Edward M. Anderson

Regina Yeh



Attorneys for Plaintiff

ALCON ENTERTAINMENT, LLC